

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

EVAN JAMES QUNELL,

Defendant/Movant.

CR 07-03-GF-BMM

CV 16-62-GF-BMM

**ORDER DENYING § 2255  
MOTION AND DENYING  
CERTIFICATE OF  
APPEALABILITY**

This matter comes before the Court on Defendant/Movant Qunell's motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. The defendant is a federal prisoner represented by Assistant Federal Defender David Ness. He seeks relief under *Johnson v. United States*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 2551 (2015), against his designation as a career offender, *see* U.S.S.G. § 4B1.1.

The Court granted Qunell's motion to defer ruling on his § 2255 motion for 14 days on March 15, 2017. Order (Doc. 388). Despite the deferral, Qunell did not timely file anything.

Qunell's § 2255 motion appears to lack merit. *Johnson* announced a new rule that is retroactive to cases, like Qunell's, on collateral review. *See Welch v. United States*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 1257 (2016). The Supreme Court now has held that provisions of the advisory sentencing guidelines are not subject to constitutional challenges on grounds of vagueness. *See Beckles v. United States*,

\_\_\_ U.S. \_\_\_, 137 S. Ct. 886, 890 (2017). The reasoning of *Johnson* cannot support relief for Qunell under § 2255.

A certificate of appealability is not warranted as Qunell has failed to make a substantial showing that he was deprived of a constitutional right. 28 U.S.C. § 2253(c)(2).

Accordingly, IT IS HEREBY ORDERED:

1. Qunell's motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 (Doc. 382) is DENIED.
2. A certificate of appealability is DENIED. The clerk shall immediately process the appeal if Qunell files a Notice of Appeal;
3. The clerk shall ensure that all pending motions in this case and in CV 16-62-GF-BMM are terminated and shall close the civil file by entering judgment in favor of the United States and against Qunell.

DATED this 12th day of October, 2017.



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Brian Morris  
United States District Court Judge